

**Testimony of Forsyth County, Georgia Chairman Jack Conway
before the United States Senate Committee on Environment and
Public Works**

On behalf of Forsyth County, the Forsyth County Board of Commissioners, and all Forsyth County citizens, I want to thank this honorable Committee for providing me this opportunity to testify regarding Forsyth County's experience and interaction with the US Army Corps of Engineers and its management of the ACT and ACF River Basins, specifically Lake Lanier.

At the outset, I must respectfully advise that Forsyth County's experience with the Corps and its management and stewardship over Lake Lanier has been at best frustrating and at worst exasperating. Forsyth County has been, and remains, discouraged and disappointed by the endless layers of bureaucracy, politics, and red-tape that seem to control the Corps, and that make it almost impossible to receive a straight, or even consistent, answer to even the most mundane of questions.

To make matters worse, the Corps seems to go to great lengths to fashion new and innovative reasons for rejecting any and all proposals by Forsyth County on methods by which the County can initiate construction of vital, redundant infrastructure for water withdrawal from Lake Lanier. This, in spite of the fact that over 21 square miles of Lake Lanier sits within the jurisdictional boundaries of Forsyth County. There is more than a little irony in the fact that Forsyth County sits upon one of the largest fresh water bodies in the Southeast, yet is only one pump failure away from a health crisis due to lack of water availability.

Throughout my tenure as Chairman of the Forsyth County Board of Commissioners, one of my chief goals has been to ensure that Forsyth County has sufficient water available to satisfy both the present and long term demands of its citizens. That effort has necessarily generated

multiple discussions, meetings, correspondence and telephone calls with Corps' personnel. The only consistent theme that has permeated these repeated encounters with Corps' personnel is that the County's overtures and initiatives are systematically rebuffed. The reasons for the rejection appear to change on a daily basis and also vary depending upon which Corps' official responds.

Although the County's request to the Corps for its own water intake begin in the mid-1970s, I will begin my chronology in 1996 to demonstrate Forsyth County's inability to obtain any cooperation whatsoever by the Corps on the water issue. While the County was, and remains, mindful that the so called "water wars" have been ongoing, and that this litigation has impacted the Corps' discretion in issuing water withdrawals, the Corps' interpretation of the 1992 Memorandum of Agreement between Georgia, Florida and Alabama, has been a moving target.

- In 1996, in response to a request by Forsyth County for its own water withdrawal permit, the Corps said "no." The reason for this "no" was because the Corps was in the process of a "Comprehensive Study" that was set for completion in September 30, 1996. (Exhibit "A")
- On March 28, 1997, then Director of the Georgia Department of Natural Resources, Harold Reheis, wrote the Corps recommending that the County and City of Cumming each be deemed "current users" under the 1992 MOA. (Exhibit "B")
- On April 22, 1997, in conjunction with Mr. Reheis' request, Forsyth County again requested approval of an additional water supply withdrawal from Lake Lanier. (Exhibit "C") On May 12, 1997, Congressman Nathan Deal also made the same request on behalf of the County. The Corps' "no" came just a month later. (Exhibit "D") On May 28, 1997, the Corps responded that although Forsyth County may be an

“existing user” as defined by the Memorandum of Agreement between Florida, Georgia and Alabama, the Corps still could not issue a withdrawal permit to Forsyth County because Forsyth County did not “withdraw directly” from Lake Lanier. (Exhibit “E”)

- On December 23, 1999, the Georgia Department of Natural Resources issued separate water withdrawal permits to the City of Cumming and Forsyth County for water withdrawal from Lake Lanier. (Exhibit “F”)
- On November 23, 2003, I wrote Colonel Robert Keyser at the Corps of Engineers requesting permission to begin construction of a second water intake into Lake Lanier to overcome the pressing issues of (1) Inadequate Withdrawal Capacity, (2) Improving Water Quality withdrawn from the Lake, and (3) Safeguarding Water System Security. I emphasized in my letter that the County was not seeking an additional water allocation, but was simply requesting approval by the Corps to construct a vitally needed water intake structure. (Exhibit “G”)
- On May 10, 2004, Colonel Keyser rejected my request stating that Forsyth County did not have a “holdover water supply contract” as anticipated by the 1992 MOA and therefore was not an “existing user” of Lake Lanier. (Exhibit “H”) Interestingly, the phrase “hold over water supply contract” is found nowhere in the 1992 MOA, and the Corps’ interpretation of the MOA is at odds with the MOA’s expansive definition of those entities that are considered “existing users” of the lake.

- Colonel Keyser also noted that an injunction entered into by the district court in Alabama, further bound his hands in cooperating with Forsyth County.
- On March 25, 2005, the Corps tendered a “Notice of Proposed Actions” to the Alabama Federal District Court stating that Forsyth County’s request for an easement into Lake Lanier could not be undertaken because “approval would require a new withdrawal contact...and is therefore enjoined.” (Exhibit “I”) The Corps’ position is, again, wholly unsupported by the 1992 MOA.
- On April 11, 2005, I attended a meeting with Congressman Nathan Deal and Corps’ officials at the Congressman’s request. At that meeting, I requested that the Corps consider granting an intake easement to the City of Cumming, with Forsyth County possibly funding the construction costs. Approximately 6 weeks later, in a telephone conversation with Colonel Taylor, I was advised that all “holdover” contracts had expired, including the contract between the Corps and the City of Cumming. Consequently, not even the City of Cumming could get a secondary intake easement.
- On September 19, 2005 the injunction that served as the latest basis by the Corps for not cooperating with Forsyth County, was lifted. On September 23, 2005, I again wrote the Corps requesting simply an easement across Corps property for purposes of commencing construction of a water intake into Lake Lanier. My correspondence emphasized that Forsyth County was not seeking any additional withdrawals, but merely needed to get started on this multi-year project to ensure the health and safety of Forsyth County citizens. (Exhibit “J”)

- On October 13, 2005, Georgia’s Senatorial delegation delivered correspondence to Deputy Assistant Secretary of the Army, John Woodley, clarifying their understanding that the Corps would get to work on the various requests of Gwinnett, Cherokee and Forsyth counties. (Exhibit “K”) Secretary Woodley responded on January 30, 2006 that he did intend to begin taking all necessary federal action. (Exhibit “L”)
- On February 1, 2006, I again delivered correspondence to the Corps requesting that the Corps immediately “make good” on its commitment to begin taking action on Forsyth County’s request for an easement. (Exhibit “M”)
- In telephone conversations following that letter, Corps officials declared that in spite of the assurances provided to our Senatorial delegation, the Corps refused to grant Forsyth County an easement because the County did not have a “hold over” storage contract.
- In Spring, 2006, the Corps advised Forsyth County that the City of Cumming should make a request for an intake easement, and that the City and County could then enter into an intergovernmental agreement for purposes of construction, operation, maintenance and distribution of water. When asked whether the Corps would place its proposal in “writing,” the Corps advised that they would not.
- The latest word from the Corps on why Forsyth County’s vital water interests cannot be addressed is because, once again, the Comprehensive Study of the ACT/ACF is ongoing.

- Exhibits “N” and “O” are copies of Forsyth County’s formal requests to the Corps of Engineers for an independent water withdrawal.

Here we are, some 10 years after the Corps used the “Comprehensive Study” as a basis for denying Forsyth County relief, it is again serving as a basis for denial. The Corps’ rationale for denying Forsyth County relief has come full circle.

The US Army Corps of Engineers has seemingly gone out of its way to deny Forsyth County its own water allocation, an easement across Corps property for a redundant intake, and even refused to provide written confirmation that a request by the City of Cumming for an intake easement would be granted.

I believe that commitments made to our Senatorial delegation have not been honored, and that the Corps has placed the water needs of Florida and Alabama over the needs of Georgia citizens.

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